IN THE HIGH COURT OF DELHI

CRL.M.C.No.644/2005

M/s. Webcity Infosys Ltd. ..... Petitioner
! through: Mr. Neeraj K.Singh, Advocate

VERSUS

$ Registrar of Companies
(Delhi & Haryana) ..... Respondent
^ through : Mr. Baldev Malik, Advocate

CRL.M.C.No.646/2005

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! through: Mr. Neeraj K.Singh, Advocate

VERSUS

$ Registrar of Companies
(Delhi & Haryana) ..... Respondent
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% DATE OF DECISION: 26.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Facts are not in dispute. Undisputed position is that if it is not a case of a continuing cause of action, admittedly complaints being filed beyond a period of 6 months from the date when actionable knowledge was with the competent authority, they would be barred by limitation.

2. Alleging violation of sub-section (1) and sub-section (2) of Section 205-A of the Companies Act 1956, complaint in question was filed beyond a period of 6 months from the date when the offence was completed i.e. reckoned with effect from 6 months after dividend was declared and remained unpaid and even beyond 6 months when knowledge of the offence was with the Registrar of Companies.

3. Whereas petitioners urge that by virtue of sub-section (8) of Section 205-A of the Companies Act the offence being punishable with only fine, limitation would be 6 months by virtue of Section 468(2)(a) of the Code of Criminal Procedure 1973, prosecution states that though limitation would be 6 months but since it is a continuing cause of action, complaint is not barred by limitation.

4. To decide the rival versions it would be relevant to note sub-section (8) of Section 205-A of the Companies Act. It reads as under:-

> "205-A. (8) If a company fails to comply with any of the requirements of the section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues."

5. Distinction between offences which take place when an act or remission is committed once for all and a continuing offence has been pithly drawn in the decision of the Supreme Court reported as AIR 1973 SC 908 *State of Bihar vs. Deokaran*

Nenshi & Anr.

6. In para 5 of the judgment it was opined as under:-

> "5. Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when act or omission is committed once and for all.

7. Their Lordships of the Supreme Court were considering regulation 3 of the Indian Metalliferous Mines Regulations and Section 66 of the Mines Act 1952. In para 9 of the report it was opined as under:-

> "9. Reg.3 read with Section 66 of the Mines Act makes failure to furnish annual returns for the preceding year by the 21st of January of the succeeding year an offence. The language of Reg.3 clearly indicates that an owner, manager etc. of a mine would be liable to the penalty if he were to commit an infringement of the Regulation and that infringement consists in the failure to furnish returns on or before January 21 of the succeeding year. The infringement, therefore, occurs on January 21 of the relevant year and is complete on the owner failing to furnish the annual returns by that day. The Regulation does not lay down that the owner, manager etc. of the mine concerned would be guilty of an offence if he continues to carry on the mine without furnishing the returns or that the offence continues until the requirement of

> Reg.3 is complied with. In other words Reg.3 does not render a continued disobedience or non-compliance of it an offence. As in the case of a construction of a wall in violation of a rule or a bye-law of a local body, the offence would be complete once and for all as soon as such construction is made a default occurs in furnishing the returns by the prescribed date. There is nothing in Reg.3 or in any other provision in the Act or the Regulations which renders the continued non-compliance an offence until its requirement is carried out."

8. A Division Bench of the Calcutta High Court considered Section 162 of the Companies Act which deals with a failure to submit returns. Sub-section (1) of Section 162 of the Companies Act reads as under:-

> "162. Penalty and interpretation. - (1) If a company fails to comply with any of the provisions contained in sections 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may, extend to five hundred rupees for every day during which the default continues."

9. Suffice would it be to note that offence under Section 162 of the Companies Act is a failure to submit a return. Further, the penalty is up to Rs.500/- for every day during which the default continues.

10. Contrasted with the language of sub-section (8) of Section 205 of the Companies Act, it be noted that the 2 provisions are pari materia. Only difference being that word used in sub-section (1) of Section 162 is 'default' and the word used in sub-section (8) of Section 205-A of the Companies Act is 'failure'.

11. Interpreting Section 162 of the Companies Act, in para 14 of the decision of the Division Bench of the Calcutta High Court

reported as 1984 Tax L.R. 2043 *National Cotton Mills Ltd. vs. Assistant Registrar of Companies*, it was held as under:-

> "14. On a careful review of the legal position, it is difficult for us to agree with the view expressed by a learned single Judge in the above case. As pointed out by the Supreme Court, in order to constitute a continuing offence, the offence must arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. Section 150 of the Companies Act does not impose any liability which so continues. The offence on the breach thereof is complete with the failure to furnish the return in the manner or within the time stipulated.
>
> Such an offence is committed once and for all as and when one commits the default. That provision does not contemplate that the obligation to submit such returns continues from day to day until the return is actually submitted nor does it provide that continuance of business without filling of such returns is prohibited so that non-fulfillment of a continuing obligation or continuing of business without filing of such returns becomes a continuing offence. When Section 162 of the Companies Act prescribed the penalty of fine 'which may extend to fifty rupees for every day during which the default continues', it merely prescribed the measure of penalty – such a prescription being made with the object of enforcing strict compliance with the requirement of Section 159 under the threat of enhanced penalty and getting relief from such penalty on enhancing scale by early submission of returns even after the default. That does not render the initial default a continuous one. It cannot be said that the offence is repeated or committed from day to day after the initial default. It is only where the offence is committed from day to day that it can be called a continuing offence. There being no express provision in Section 234, 598 etc. of the Companies Act it will not be proper to hold that the offence under Section 162 is a continuing offence. When the statute itself provides for continuance of offence irrespective of

> initial default in some cases but does not make similar provisions in respect of some other offences, it would not be correct to say that the latter class of cases also would be continuing offences.

12. I note that the Division Bench of Calcutta High Court based its decision and heavily relied upon the decision of the Supreme Court in *Deokaran Nanshi's* case (supra).

13. Thus, there is no need for me to explain any further save and except to record that the logical conclusion of following the ratio of law declared in *Deokaran Nanshi's* case (supra) as followed and elaborated by the Division Bench of the Calcutta High Court in *National Cotton Mills'* case (supra) requires this Court to hold that offence under Section 205-A of the Companies Act, as punishable under sub-section (8) thereof, is not a continuing offence. The offence arises out of a failure to obey or comply with the rule and involves a penalty. The liability may continue until the requirement is obeyed or complied with. It is not a case where the offence is repeated or committed from day-to-day after the initial default.

14. I thus hold that the complaint against the petitioner was barred by limitation and hence learned Metropolitan Magistrate could not take cognizance thereof. I also note that in the summoning order, the learned Magistrate has not condoned the delay.

15. Before concluding, a submission made when judgment was being dictated may be noted. The submission was by

learned counsel for the respondent. It was urged that limitation would commence with effect from the date Regional Director accorded permission for filing of the complaint.

16. I am afraid, the submission is based on a complete ignorance of law. Limitation has to commence when actionable knowledge is gained by the competent authority. In the instant case, it may be noted that the inspections were completed and reports were available with the Regional Director, Northern Region, Kanpur by the end of December 2000.

17. The complaints in question were filed on 16.5.2002.

18. The petitions stand disposed of quashing the complaint as also the summoning order dated 16.5.2002 in both the complaints, summoning the petitioners to face trial.

19. No costs.

September 26, 2007 **PRADEEP NANDRAJOG, J.**
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